## Mark Sia Eng Joo (L) v Ong Wei Wei (P) (Lim Poh Tin (P), joint respondent) (Sai Yee @ Sia Say Yee & Ors, interveners)

HIGH COURT (SHAH ALAM) — DIVORCE PETITION NO BA-33–607–09 OF 2018
HAYATUL AKMAL J
27 JANUARY 2020

*Civil Procedure — Stay of proceedings — Application for — Intervener applied for stay of divorce proceedings pending disposal of originating summons — Whether requirement of special circumstances had been satisfied — Whether court had jurisdiction — Law Reform (Marriage and Divorce) Act 1976 ss 53 & 76 — Specific Relief Act 1950 s 41*

The petitioner husband ('PH') had filed a divorce petition under s 53 of the Law Reform (Marriage and Divorce) Act 1976 ('the LRA') to dissolve his marriage to the respondent wife ('RW'). On the one hand, RW in her answer to the said petition and cross-petition had listed the bank accounts/money registered in the joint names of PH and the interveners as matrimonial assets subject to division under s 76 of the LRA, while on the other hand, the interveners claimed that the said accounts and the money in the said bank accounts were theirs. The interveners claimed that at all material times, the monies in the bank accounts belonged to the interveners and not PH ie their son, who was only added as a joint signatory to the bank accounts as a precautionary measure if something untoward were to happen to the interveners. Consequently, the interveners had filed an application to intervene as interveners in the divorce proceedings and a declaratory application via an originating summons ('the OS') for a declaration that the interveners were the lawful and beneficial owners of the monies in the said bank accounts. The interveners had intended to mitigate the issue of duplicity of actions and decisions from the court in order to save time and costs of all parties concerned given that the filing of the OS meant that the bank accounts had now become the subject matter of both the civil court and the family court. Hence the application to stay the proceedings in this court pending the determination of the status of the said accounts by the civil court.

**Held,** allowing part of the interveners' application:

(1) Special circumstances must be special under the circumstances as distinguished from ordinary circumstances that was left practically to the opinion and judicial discretion of the presiding judge. The category of special circumstances could never be limited or closed, as from time to time and from case to case, different and various factors may be accepted

as special circumstances. Taking the affidavit evidence in totality, the requirement of special circumstances had been satisfied for the grant of stay of proceeding in this case (see para 11).

(2) This court did not have the jurisdiction under the LRA to grant the interveners the declarations they sought pursuant to s 41 of the Specific Relief Act 1950 as firstly, it was a civil matter that did not pertain to the matrimonial proceeding before the court and it was intended to establish a third party ownership right over assets not yet determined as matrimonial assets in this court, and secondly, in such circumstances, it was a civil proceeding within the domain of the civil court as opposed to a matrimonial matter before the family court (see para 12).

(3) The stay application was not intended to delay the divorce proceedings. The arguments by RW that by being allowed to intervene in the divorce proceeding, the interveners had submitted to the jurisdiction of the family court to determine the legal status of the said accounts/money, could not stand. By getting the legal issue of the said accounts/money resolved with clarity, would greatly assist this court to make a just division of the assets in accordance with the law and the statute (see para 14).

**[Bahasa Malaysia summary**

Pempetisyen suami ('PS') telah memfailkan petisyen perceraian di bawah s 53 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta') untuk membubarkan perkahwinannya dengan responden isteri ('RW'). Sebaliknya, RW dalam jawapannya terhadap petisyen tersebut dan petisyen silang telah menyenaraikan akaun bank/wang yang didaftarkan dengan nama bersama PS dan pencelah sebagai aset perkahwinan tertakluk kepada pembahagian di bawah s 76 Akta, manakala, pencelah mendakwa bahawa akaun tersebut dan wang dalam akaun bank tersebut adalah milik mereka. Pencelah mendakwa bahawa pada setiap masa material, wang dalam akaun bank adalah milik pencelah dan bukan PS iaitu anak lelaki mereka, yang hanya ditambahkan sebagai penandatangan bersama ke akaun bank sebagai langkah berjaga-jaga sekiranya sesuatu yang tidak diingini berlaku kepada pencelah. Akibatnya, pencelah telah memfailkan permohonan untuk mencelah sebagai pencelah dalam prosiding perceraian dan permohonan pengisytiharan melalui saman pemula ('SP') untuk pengisytiharan bahawa pencelah adalah pemilik wang yang sah dan berkepentingan dalam akaun bank tersebut. Pencelah bertujuan untuk mengurangkan masalah pertindihan tindakan dan keputusan dari mahkamah agar dapat menjimatkan masa dan kos semua pihak yang berkaitan memandangkan pemfailan SP tersebut bermaksud bahawa akaun bank kini telah menjadi hal perkara kedua mahkamah sivil dan mahkamah keluarga. Oleh itu permohonan untuk menangguhkan prosiding di mahkamah ini sementara menunggu penentuan status akaun tersebut oleh mahkamah sivil.

**Diputuskan,** membenarkan sebahagian permohonan pencelah: A

(1) Keadaan khas harus khas dalam keadaan seperti yang dibezakan dari keadaan biasa yang secara praktikalnya diserahkan kepada pendapat dan budi bicara hakim. Kategori keadaan khas tidak akan pernah terbatas atau tertutup, dari semasa ke semasa dan dari kes ke kes, faktor yang berbeza dan pelbagai dapat diterima sebagai keadaan khas. Dengan mengambil keterangan afidavit secara menyeluruh, syarat keadaan khas telah dipenuhi untuk pemberian penangguhan prosiding dalam kes ini (lihat perenggan 11). B

(2) Mahkamah ini tidak mempunyai bidang kuasa di bawah Akta untuk memberikan pencelah pengisytiharan yang mereka pohon berdasarkan s 41 Akta Relief Spesifik 1950 kerana pertama, ia adalah perkara sivil yang tidak berkaitan dengan prosiding perkahwinan di hadapan mahkamah dan ia adalah bertujuan untuk menetapkan hak pemilikan pihak ketiga atas aset yang belum ditentukan sebagai aset perkahwinan di mahkamah ini, dan kedua, dalam keadaan seperti itu, ia adalah prosiding sivil dalam bidang mahkamah sivil yang bertentangan dengan hal perkahwinan di hadapan mahkamah keluarga (lihat perenggan 12). C D

(3) Permohonan penangguhan tidak bertujuan untuk menangguhkan prosiding perceraian. Hujah-hujah oleh RW bahawa dengan membenarkan pencelahan dalam prosiding perceraian, pencelah telah menerima bidang kuasa mahkamah keluarga untuk menentukan status undang-undang akaun/wang tersebut, tidak dapat bertahan. Dengan menyelesaikan isu undang-undang akaun/wang tersebut dengan jelas, akan sangat membantu mahkamah ini untuk membuat pembahagian aset yang adil sesuai dengan undang-undang dan peraturan (lihat perenggan 14).] E F

**Cases referred to** G

*Ezzen Heights Sdn Bhd v Ikhlas Abadi Sdn Bhd (Soh Yuh Mian, intervener)* [2011] 4 MLJ 173; [2011] 3 CLJ 16, CA (refd)

*HSBC Bank (M) Bhd v Jejak Maju Resources Sdn Bhd & Ors* [2015] 10 MLJ 645, HC (refd)

*Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257, FC (refd) H

*Leong Poh Shee v Ng Kat Chong* [1966] 1 MLJ 86 (refd)

*Low Nam Hui & Sons Sdn Bhd v Huang Yan Teo* [2007] 7 MLJ 13, CA (refd)

*Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49, CA (refd) I

*Mohamed Mustafa v Kandasami (No 2)* [1979] 2 MLJ 126, FC (refd)

*Ong Ah Mai v Ling Pooi Ming* [1984] 2 MLJ 129 (refd)

*Rowstead Systems Sdn Bhd v Bumicrystal Technology (M) Sdn Bhd* [2005] 3 MLJ 132, CA (refd)

*Shobana a/p Perumal v Ganesh a/l Guna* [2016] MLJU 1108, HC (refd)
*UDA v UDB and another* [2018] SGCA 20; [2018] 1 SLR 1015, CA (refd)
*Universal Trustee (M) Bhd v Lambang Pertama Sdn Bhd & Anor* [2015] 7 MLJ 305, HC (refd)

**Legislation referred to**

Courts of Judicature Act 1964 s 25
Law Reform (Marriage and Divorce) Act 1976 ss 53, 76, 76(1)
Rules of Court 2012 O 92 r 4
Specific Relief Act 1950 s 41
Women's Charter [SG] s 112, 112(1)

*Vignesvary Alahakone (Jayarajah with him) (Alahakone & Assoc) for the petitioner husband.*
*Michelle Lim (Colin Liew with her) (Chih-Jen & Assoc) for the respondent wife.*
*WH Kan (Jillian Yuen Jie Ying with him) (WH Kan) for the interveners.*

**Hayatul Akmal J:**

INTRODUCTION

**[1]** The interveners filed an application to intervene as interveners and to stay the present proceeding pending the disposal of an Originating Summons ('OS') No BA-24NCVC-972–07 of 2019, which was filed for a declaration that the assets that were partly registered under the petitioner husband's name are actually theirs and other prayers.

**[2]** The relevant cause papers and written submissions, are as follows:

(a) encl 102: notice of application for stay of proceeding dated 29 August 2019;

(b) encl 103: the intervener's affidavit in support affirmed by Sai Yee @ Sia Say Yee on 29 August 2019;

(c) enclosure: the respondent wife's affidavit in reply affirmed by Ong Wei Wei on 18 September 2019;

(d) enclosure: the petitioner husband's affidavit in reply affirmed by Mark Sia Eng Joo on 30 September 2019; and

(e) encl 103: the intervener's further affidavit affirmed by Sai Yee @ Sia Say Yee on 2 October 2019.

Written/reply submissions by the interveners, PH and RW.

**[3]** This application was heard before me on 21 November 2019 and after perusing the cause papers filed, respective written submissions of the parties, I

allowed part of the said application ie the granting of stay is only confine to the issue of matrimonial assets, with no order as to cost dissatisfied with part of the decision, RW had filed this appeal and at the outset, I wish to emphasis that I will only confine my reasonings to the present appeal and my reasons are as follows.

BRIEF FACTS

**[4]** The petitioner husband ('PH') had filed the current divorce petition under s 53 of the Law Reform (Marriage and Divorce) Act 1976 to dissolve his marriage to the respondent wife ('RW'). On the one hand, RW in her answer to the said petition and cross-petition had listed the bank accounts/money registered in the joint names of PH and the interveners as matrimonial assets subject to division under s 76 of the Law Reform (Marriage and Divorce) Act 1976 ('the said LRA'), while on the other hand, the proposed interveners claimed that the said accounts and the money in the said bank accounts are theirs. The contested bank accounts are listed below:

Accounts in the names of the PH and Sia Sai Yee:

| No | Bank | Account No | Estimated Amount (RM) | Type of Account |
|---|---|---|---|---|
| 5. | UOB | 126-301-877-5 | 2,200,000 | Current opened on 24 October 2014 |
| 11. | UOB | 34329000566 | 610,400 | Bond. |
| 15. | UOB | 171-009-998-2-000084 | 597,000 | Fixed deposit. |
| 16. | UOB | 171-009-998-2-000085 | 500,000 | Fixed deposit. |
| 17. | UOB | 171-009-998-2-000087 | 520,000 | Fixed deposit. |
| 18. | UOB | 171-009-998-2-000073 | 1,040,000 | Fixed deposit. |
| 19. | UOB | 171-009-998-2-000079 | 1,000,000 | Fixed deposit. |
| 20. | UOB | 171-009-998-2-000080 | 1,000,000 | Fixed deposit. |
| 21. | UOB | 171-009-998-2-000081 | 700,000 | Fixed deposit. |
| 22. | UOB | 171-009-998-2-000082 | 1,000,000 | Fixed deposit. |
| 23. | UOB | 171-009-998-2-000083 | 1,060,000 | Fixed deposit. |

Accounts in the names of PH and Olive Lim Swee Lian:

| No | Bank | Account No | Estimated Amount (RM) | Type of Account |
|---|---|---|---|---|
| 29. | Hong Leong Bank | 184600043276 | 138,200 | Fixed deposit. |

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|---|---|---|---|---|
| 30. | Hong Leong Bank | 184600043276 | 138,200 | Fixed deposit. |
| 31. | Hong Leong Bank | 184600043276 | 138,200 | Fixed deposit. |
| 32. | Hong Leong Bank | 184600043276 | 138,200 | Fixed deposit. |

Accounts in the names of PH and Siah Shu Yii:

| No | Bank | Account No | Estimated Amount (RM) | Type of Account |
|---|---|---|---|---|
| 33. | Hong Leong Bank | 28260100254 | 142,000 | Fixed deposit opened in 1990. |
| 34. | Hong Leong Bank | 28260100254 | 200,000 | Fixed deposit opened in 1990. |

For ease of reference, I will refer to the above accounts as 'the said accounts/money'.

**[5]** The interveners claimed that at all material times, the monies in the said bank accounts belongs to the interveners and not PH (their son), who was only added as a joint signatory to the said bank accounts as a precautionary measure if something untoward were to happen to the interveners (considering that the interveners are now in their 70s and suffering from deteriorating health). Consequently, the interveners had filed:

(a) applications via encls 37 and 66 to intervene in this divorce proceedings which were allowed by this court on 24 June 2019 (encl 101); and

(b) they had also filed a declaratory application via Originating Summons No BA-24NCvC-972–07 of 2019 at the Shah Alam Civil High Court ('the said OS') for declaration(s) that the interveners are the lawful and beneficial owners of the monies in the said bank accounts ('the OS'). This court was made to understand that RW had also filed to intervene in that said OS proceedings.

The interveners had intended to mitigate the issue of duplicity of actions and decisions from the court in order to save time and costs of all parties concerned given that the filing of the OS meant that the bank accounts had now become the subject matter of both the civil court and the family court. Hence the application to stay the proceedings in this court pending the determination of the status of the said accounts by the said civil court.

**[6]** While PH had no objection to this application for stay, RW strenuously objected to this application and averred that the said OS was a collective

strategy by PH and the said interveners to frustrate her claim against the said accounts/money by having a 'second bite of the cherry' due to similar issues raised in the said OS.

SUBMISSION BY THE INTERNEVENRS

[7] The interveners argued that:

(a) s 25 of the Courts of Judicature Act 1964 and O 92 r 4 of the Rules of Court 2012 ('the RC 2012'), provides the court with inherent powers to grant stay. I was alluded to *Ezzen Heights Sdn Bhd v Ikhlas Abadi Sdn Bhd (Soh Yuh Mian, intervener)* [2011] 4 MLJ 173; [2011] 3 CLJ 16 (CA), ruled:

> The inherent powers of the High Court and the Court of Appeal have been given statutory recognition by way of subsidiary legislation in O 92 r 4. These potentially wide powers are procedural and may be exercised as residuary or reserve powers to suppress an abuse of the process of the court and to defeat any attempted thwarting of its process: see eg *Connelly v Deputy Public Prosecutor* [1964] AC 1254 at p 1301 (HL) per Lord Morris. These powers include all the powers that are necessary to fulfil itself as a court of law; to uphold, to protect, and to fulfil the judicial function of administering justice in a regular, orderly and effective manner: per Edger Joseph JR J (later FCJ) in *Pacific Centre Sdn Bhd v United Engineers (Malaysia) Bhd* [1984] 2 MLJ 143; [1984] 2 CLJ 56; [1984] 2 CLJ Rep 319.

(b) I was also alluded to *Rowstead Systems Sdn Bhd v Bumicrystal Technology (M) Sdn Bhd* [2005] 3 MLJ 132 (CA), ruled:

> It is now a well-established principle that in an application for a stay of proceedings the applicant must show the existence of special circumstances. This principle was originally adopted in the case of *Serangoon Garden Estate Ltd v Ang Keng* [1953] 1 MLJ 116 ...

(c) the requirement of special circumstances is as follows:

(i) to avoid duplicity of proceedings and potential conflicting decisions of court of parallel jurisdictions (family court/civil court) concerning the said bank accounts and the funds therein. My attention was drawn to *HSBC Bank (M) Bhd v Jejak Maju Resources Sdn Bhd & Ors* [2015] 10 MLJ 645, where Azimah Omar J had ruled:

> In this situation, special circumstances would arise in which obviously there would be duplicity of decisions which would probably result in contradictory decisions by the two courts. Particularly in this case, the duplicity would be the decision between the session's court inquiry and the High Court here. I must say that both actions would achieve the same effect relating to these monies in which both actions would ultimately decide which party is entitled to the monies. This may give

rise to two conflicting decisions on the same monies. The duplicity here is not so much on the proceedings which saw the same parties' involvement but instead would be the preceding hypotheses, which entails the duplicity of decisions from the proceedings in which both causes of action would decide which party is entitled to the monies.

(ii) the said OS has created a situation where the said bank accounts are now the subject matter in both the family and the civil court, and without a stay of proceedings, it will inevitably lead to the two courts of parallel jurisdiction determining the legal status of the said accounts and the funds therein, with potential for conflicting decisions causing ambiguity and uncertainty in the status of the said account and the funds therein. A stay of proceedings is therefore required;

(iii) the civil court would be the proper forum to firstly determine the legal status of the said accounts/money. The family court by virtue of the LRA 1976, s 76(1) is to determine and make an order on distribution of matrimonial assets when granting a decree of divorce between the parties and the court is required to appropriately make a finding on the existence of matrimonial assets. In the present case, RW had listed the said bank accounts which is claimed by the interveners as theirs and therefore not forming part of the party's matrimonial assets. It must in the circumstances be taken out from the court's consideration for the division of assets. My attention was drawn to *Shobana a/p Perumal v Ganesh a/l Guna* [2016] MLJU 1108, where it was held that in a civil issue, the family court is not the proper forum as it is not empowered to go beyond LRA 1976. Hence the need for the civil court (OS) to decide on the legal status of the said accounts/money. A stay in such special circumstances in the family court is indeed warranted;

(iv) my attention was also drawn to *UDA v UDB and another* [2018] SGCA 20; [2018] 1 SLR 1015 (CA), where the husband had claimed that a property owned by the wife's mother was a matrimonial asset. The wife's mother had obtained leave to intervene in the divorce proceedings on the basis that she wished to dispute the husband's claim. The family court on its own accord had decided to stay the hearing of the ancillary matters to allow the husband to pursue a civil action to determine the issue of the disputed property. However, the intervener (wife's mother) had appealed against the stay of proceedings. The Court of Appeal had dismissed the appeal and found that the stay had been properly declared. In coming to their decision, the court had dealt with the unique position of the family court's jurisdiction in relation to the

division of property on divorce when third party interests were involved. At para [24] it was held:

> The main issue before us in this appeal was whether a family justice court, when exercising its powers under s 112 of the Charter to divide matrimonial assets between divorcing spouses, has the jurisdiction to hear and to determine claims by a third party to be the legal or beneficial owner of any alleged matrimonial asset (a 'disputed asset') and to make orders which would directly affect the third party's interest in the disputed asset ...
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> Learned counsel submitted that s 112 of the Women's Charter is very similar to s 76 of the LRA:
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> Women's Charter:
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> 112(1)Power of court to order division of matrimonial assets
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> The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division *between the parties* of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

(v) the court in *UDA v UDB* made a finding that s 112(1) of the Women's Charter did not confer power for the court to adjudicate third party claim on alleged matrimonial asset or to make orders against the third party in respect of that asset as the phrase 'between the parties', circumscribes the power granted as one that can be applied only to the parties (divorcing spouses) to the matrimonial proceedings: 'A third party claiming an interest in any property alleged to be a matrimonial asset is entitled to have his rights ruled on by the court and is, further, entitled to the benefit of a final ruling which he can assert against the rest of the world. If the third party wants to directly assert those rights, what should he do? He can, of course, and should commence independent civil proceedings against either or both the spouses (depending on the factual situation) for a declaration as to his interest and other relief. The question is whether he can do anything in relation to the ongoing s 112 proceedings. Given that the third party cannot participate in those proceedings, whilst he may ask for leave to intervene in the proceedings, the only purpose of such intervention would be to notify the court of his interest and apply for a stay of the s 112 proceedings pending determination of his separate civil suit';

(vi) it is on this basis that the interveners had intervened to notify this

family court of their interest and to apply for a stay pending determination in a separate civil suit for the OS. The stay application is not intended to delay this divorce proceedings. The arguments by RW that by being allowed to intervened in this divorce proceeding, the interveners had submitted to the jurisdiction of the family court to determine the legal status of the said accounts is baseless and without merits since the family court derives its power from the statute (LRA) which in its current construct as decided by the CA in *UDA*'s case as having limitation in regard to third party claim on the alleged matrimonial assets. The decision by VC George J in setting aside terms of a consent order between the parties in *Ong Ah Mai v Ling Pooi Ming* [1984] 2 MLJ 129, was referred to: 'In my judgment with the greatest respect to the Judge who obviously was prevailed upon to make the consent order, his jurisdiction was not that of a judge hearing an application for ancillary relief after a decree of dissolution of marriage but that conferred on him by s 24(d) of the Courts of Judicature Act 1964 and the Married Women and Children (Maintenance) Ordinance 1950, the former dealing with the custody of the children and the latter with periodical payments by way of the maintenance for the wife and children. These provisions of the law do not confer on the court jurisdiction to make orders pertaining to the division of family property or for the parties to file divorce proceedings.';

(vii) the interveners' actions are in line with the procedure as set out in *UDA v UDB*. Since RW had also applied to intervene in the OS proceedings, she would be able to assert her rights (if any) in the civil court and so there is no prejudice whatsoever that will be occasioned by a stay of proceedings in the family court.

SUBMISSIONS BY THE RESPONDENT WIFE

**[8]** RW argued that the stay application should be dismissed:

(a) the OS proceedings do not give rise to special circumstances that warrants a stay of the divorce proceedings since the interveners had already subjected themselves to this family court's jurisdiction when they were granted permission to intervene. By filing the OS proceeding in the civil court, it is intended to delay this divorce proceeding;

(b) since they have been allowed to intervene in this divorce proceeding, they are now able to challenge the legal status of the said accounts/money at the trial of this divorce action;

(c) it is improper for the interveners after having been allowed to intervene in this matrimonial proceeding, now seek (OS) a declaration in the civil court to determine the legal status of the said accounts/money, when

such legal determination can be made in the present matrimonial proceedings. The learned counsel submitted that the current proceedings ought not to be stayed since this family court has the proper jurisdiction to adjudicate the matter notwithstanding the said OS proceedings in the civil court;

(d) RW further argued that in the event her application to intervene in the OS application before the civil court is disallowed, the interveners together with PH will be at liberty to collude and have it declared that the said accounts/money belongs to the interveners and thereby automatically removing the said accounts as matrimonial assets that will no longer be subject to the scrutiny of this family court. This stay application by the interveners and PH is actuated by bad faith and is an abuse of process intended to deny RW's claim to the said accounts/money; and

(e) the matrimonial proceeding ought to take precedence to that of the OS at the civil court as the OS is subsequent to the former and it has also involved the intervener. There is no guarantee that the legal determination to be made at the civil court on the legal status on the said accounts/money will be correct. Such action would unnecessarily prolong the matrimonial proceeding to the detriment of the RW and the children as they will continue to suffer from the emotional and financial hardship that comes with this highly contentious divorce proceeding. The said OS proceedings should not hinder the expeditious disposal of this divorce proceedings since this court has the full and proper jurisdiction to hear and dispose the matter.

SUBMISSIONS BY THE PETITIONER HUSBAND

**[9]** Learned counsel for PH has no objection to the stay application and submitted that there are three special circumstances to justify stay:

(a) the family court do not have the jurisdiction to hear, determine and make orders which would directly affect assets which are legally and beneficially claimed by third parties;

(b) the OS filed by third parties (interveners) may be heard and their rights determined by the civil court and the decision of that court though not binding would be persuasive enough to the family court (except in the case of manifest error) as to the legal status of the said accounts/money which in the circumstances will have a direct bearing on the finding of matrimonial assets by the family court herein;

(c) there is a serious and genuine need to avoid duplicity of proceeding and decisions on the issue which may or may not give rise to conflicting decisions by court of concurrent jurisdiction. Learned counsel for PH

places reliance on Singapore CA decision in *UDA v UDB*, that had determined that a Family Court of Singapore does not have the jurisdiction to hear, determine and make orders which would directly affect assets legally and beneficially owned by third parties to the proceedings. That the matrimonial proceeding is intended by the legislature to involved only the spouses by making a narrow interpretation of the word 'parties' to the matrimonial proceeding to mean the spouses and not third parties such as the interveners in the present case. PH submitted further that the family court does not have the jurisdiction to grant the interveners the declarations which they have sought pursuant to s 41 of the Specific Relief Act 1950 because its jurisdiction to order the division of assets under the LRA is limited only to the 'parties' to the marriage itself namely the husband and wife. The third parties have been allowed to intervene in the divorce proceedings in order to formally notify the family court of a third party dispute to the claimed accounts/money and for them to proceed in any other manner prescribed by law to pursue and establish their claimed over the said accounts/money therein; and

(d) it was argued that stay should be granted because the said OS filed in the civil court will be heard and determined much faster due to the use of affidavits evidence as compared to the need for witness statements and cross-examinations as in the full trial of a divorce matter. The civil court may grant the declarations sought by the interveners without having to first go through a full trial as compared to the family court. It is finally argued that though the judgment by the civil court is not binding on a court of concurrent jurisdiction, its legal determination of the disputed issue would have significant persuasive influence on the decision to be made by the family court as regards to the legal status of the said accounts.

## THE LAW

Section 25 of the Courts of Judicature Act provides as follows:

> 25(1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.
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> (2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:
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> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

Order 92 r 4 of the Rules of Court 2012 provides the inherent powers of the

court:

> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

**[10]** The law on stay:

(a) *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257 where Federal Court ruled:

> (3) The onus is on the applicants to demonstrate the existence of special circumstances to justify the grant of a stay of execution. The reasons must relate to the enforcement of the judgment. They must be deposed in the affidavit filed in support of the application.
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> ... Furthermore, the applicants had not put forward reasons that were related to the enforcement of the judgment, instead they had focused on the problems that the applicant would encounter if the motion was not successful.

(b) *Universal Trustee (M) Bhd v Lambang Pertama Sdn Bhd & Anor* [2015] 7 MLJ 305, KK Wong J said that case law does not distinguish stay of execution from stay of proceedings; case law requires both the applicants for stay of execution and stay of proceedings to show 'special circumstances' to justify a stay; and an applicant for a stay of proceedings should bear a heavier burden vis a vis an applicant for a stay of execution because such an application hinders the expeditious disposal of a suit;

(c) in a nutshell, stay is legally defined as suspension of the case or some designated proceedings within it (see: *Black's Law Dictionary*, Henry Campbell Black (6th Ed, 1990, West Publishing Co, p 1413)). The guiding principles are:

(i) the court has wide judicial discretion whether to grant or refuse stay anchored on established judicial principles;

(ii) the degree of importance ascribed to the factor pleaded is dependent on the facts and circumstances of each case (see *Mohamed Mustafa v Kandasami (No 2)* [1979] 2 MLJ 126);

(iii) special circumstances, as the phrase implies, must be distinguished from ordinary circumstances. It must be something exceptional in character, something that exceeds or excels in some way that which is usual or common (see: *Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49; *Kosma Palm Oil Mill Sdn Bhd*);

(iv) the RC 2012 did not stipulate any specific definition on what constitutes special circumstances but the word 'special' denotes a situation that is exceptional which is left practically to the opinion

A and judicial discretion of presiding judges (see: *Leong Poh Shee v Ng Kat Chong* [1966] 1 MLJ 86); and

(v) the category of special circumstances can never be limited or closed, as from time to time and from case to case different and various factors may be accepted as special circumstances (see: *Low Nam Hui & Sons Sdn Bhd v Huang Yan Teo* [2007] 7 MLJ 13).

B

FINDINGS OF THIS COURT

C **[11]** The law requires this court to make a determination whether the affidavit of facts before this court by the interveners and PH can sufficiently be regarded as affidavits of special circumstances; read against the affidavit of RW; collectively are convincing enough for the court to grant the stay as applied. I take much guidance form established principles that special circumstances, as the phrase implies, must be special under the circumstances as distinguished from ordinary circumstances that is left practically to the opinion and judicial discretion of the presiding judge: see the cases of *Kosma Palm Oil Mill Sdn Bhd & Ors*; *Leong Poh Shee*. I am also minded that the category of special circumstances can never be limited or closed, as from time to time and from case to case, different and various factors may be accepted as special circumstances (see *Low Nam Hui & Sons Sdn Bhd*). It is my considered view, taking the affidavit evidence in totality, the requirement of special circumstances has been satisfied for the grant of stay of proceeding in the present case.

D

E

F **[12]** The power of this court to divide matrimonial assets is found in s 76 of the LRA and are confined to parties to the marriage itself namely the husband and wife and does not include a third person. I am aware that the decision of the High Court of concurrent jurisdiction is not binding on this court but is persuasive in nature. I agree with the arguments of the interveners that this court does not have the jurisdiction under the LRA in the circumstances of the present case to grant the interveners the declarations they seek pursuant to s 41 of the Specific Relief Act 1950 as firstly, it is a civil matter that do not pertain to the matrimonial proceeding before the court and it is intended to establish a third party ownership right over assets not yet determined as matrimonial assets in this court, and secondly, in such circumstances, it is a civil proceeding within the domain of the civil court as opposed to a matrimonial matter before the family court.

G

H

I **[13]** There is a real and immediate possibility of duplicity of action leading to unnecessary possibility of differing judgments by High Courts of concurrent jurisdiction into the issue which ought to be properly mitigated in the right forum as far as possible. I take judicial cognisance of the Singapore CA decision in *UDA v UDB and another*, where:

(a) the family court on its own accord had decided to stay the hearing of the ancillary matters to allow the husband to pursue a civil action to determine the disputed property issue. The wife's mother (intervener) appealed; and

(b) the CA had dismissed the appeal and found that the stay had been properly declared. It was ruled that the family court do not have jurisdiction by virtue of s 112 of the Women's Charter (in pari materia with s 76 of the LRA) to hear, determine and make orders on claims by third party to be the legal or beneficial owner of any alleged matrimonial assets. The CA in that case had made restrictive interpretation of the phrase 'between the parties' in s 112(1) which is similar to our s 76(1) to mean only disputes between the divorcing husband and the wife, not involving third parties; and

(c) in the event of a third party dispute on the alleged matrimonial assets the CA promulgated that an application for intervention be made in the matrimonial proceeding to enable the family court to be properly and formally notified of the impending third party claim on the alleged matrimonial assets for the family court to then act accordingly and thereafter for the third party to proceed to the civil court to address and establish his/her claim thereto.

**[14]** In the circumstances I cannot subscribe to RW's arguments that the stay application is intended to delay this divorce proceedings. It is also my considered view that the arguments by RW that by being allowed to intervene in this divorce proceeding, the interveners had submitted to the jurisdiction of the family court to determine the legal status of the said accounts/money, cannot stand. The family court is only empowered to divide matrimonial assets 'between the parties' (ie between the divorcing husband and the wife) in accordance with s 76 of the LRA and not otherwise. Furthermore, by getting the legal issue of the said accounts/money resolved with clarity, would greatly assist this court to make a just division of the assets in accordance with the law and the statute.

## CONCLUSION

**[15]** In light of the foregoing and after closely scrutinising the application and examining all evidence adduced before me, I allowed part of the interveners application to stay the proceedings with no order as to cost.

*Part of interveners' application allowed.*

Reported by Ahmad Ismail Illman Mohd Razali